

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-1709V

UNPUBLISHED

BARBARA BENSON,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: July 18, 2022

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Amy A. Senerth, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Tyler King, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On November 30, 2020, Barbara Benson filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a left shoulder injury related to vaccine administration (“SIRVA”), a defined Table injury, after receiving the influenza vaccine on October 12, 2019. Petition at 1, ¶ 2. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 26, 2022, a ruling on entitlement was issued, finding Petitioner entitled to compensation for her SIRVA. On July 18, 2022, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$61,740.66, representing \$60,000.00 for her pain and suffering and \$1,740.66 for her past unreimbursable expenses. Proffer at 2. In the Proffer, Respondent represented that

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$61,740.66, representing \$60,000.00 for her pain and suffering and \$1,740.66 for her actual unreimbursable expenses in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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BARBARA BENSON,

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SECRETARY OF HEALTH AND
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Respondent.

No. 20-1709V
Chief Special Master Corcoran
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On November 30, 2020, Barbara Benson (“petitioner”) filed a petition for compensation (“petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34, *as amended*. She alleges that she sustained a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, within the Table time period following administration of an Influenza vaccine she received on October 12, 2019. *See* Petition. On April 25, 2022, respondent filed his Vaccine Rule 4(c) report, indicating that this case is appropriate for compensation under the terms of the Act for a SIRVA Table injury. ECF No. 30. On April 26, 2022, the Chief Special Master issued a ruling on entitlement, finding that petitioner was entitled to compensation for a SIRVA Table injury. ECF No. 31.

¹ This Proffer does not include attorneys’ fees and costs, which the parties intend to address after the Damages Decision is issued.

II. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$60,000.00 in pain and suffering.

See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that she incurred past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$1,740.66. *See* 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

III. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following²: a lump sum payment of \$61,740.66, in the form of a check payable to petitioner.

IV. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Barbara Benson: **\$61,740.66**

² Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future pain and suffering.

Respectfully submitted,

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s/ Tyler C. King
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